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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DALE S. CHENEY

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Appeal 2008-3058  
Application 10/021,267  
Technology Center 3700

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Decided:<sup>1</sup> May 13, 2009

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Before TONI R. SCHEINER, LORA M. GREEN, and  
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 27, 28, 30, 34-36, 38, 39, 43-49, and 53.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

### STATEMENT OF THE CASE

The claims are directed to a vehicle storage box. Claims 27, 35, 43, and 53 are representative of the claims on appeal, and read as follows:

27. A vehicle storage box, comprising:

- a) a base structure;
- b) a lid, pivotally connected to the base structure, shaped to enclose the base structure; and
- c) a lid coupler comprising a first and second adjustable lid actuator and a first and second lid latch, connected to the lid and the base structure, shaped to releasably couple the lid to the base structure, the lid coupler having a first coupling position occurring when the lid is in an opened position;
- d) the lid actuator including a hooking cam to engage the lid latch while the lid is in an opened position such that, as the lid actuator is rotated, the lid latch tracks along the hooking cam of the lid actuator while the lid is pulled down; and
- e) the first and second lid actuators being coupled together by a cable and pulley system wherein a pulley is coupled to each of the lid actuators and connected by a cable for simultaneous operation of the first and second lid actuators.

35. A storage box for use with vehicles comprising:

- a) a base structure;
- b) a lid, pivotally connected to the base structure, shaped to enclose a portion of the base structure; and

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<sup>2</sup> Claims 29, 34-36, and 50-52 are also pending, but have been indicated as having allowable subject matter (App. Br. 2).

c) lid coupling means, connected to the lid and the base structure, for releasably coupling the lid to the base structure, and having a first coupling position occurring when the lid is in an opened position; and

d) the lid coupling means including a lid latch coupled to the lid, and means, rotably coupled to the base structure, for engaging and latching the lid latch while in the first coupling position; and

e) the means for engaging and latching the lid latch including a hooking cam for facilitating closing and securing the lid to the base structure, the hooking cam on a lid actuator engages the lid latch while the lid is in an opened position such that, as the lid actuator is rotated, the lid latch tracks along the hooking cam of the lid actuator wherein the lid is pulled down, the lid being securely closed upon complete travel of the lid latch along the hooking cam; wherein the lid actuator rotates substantially 180 degrees along the hooking cam such that the lid latch is forced through cam action.

43. A vehicle storage box, comprising:

a) a base structure;

b) a lid, pivotally connected to the base structure, shaped to enclose the base structure; and

c) a lid coupler, connected to the lid and the base structure, shaped to releasably couple the lid to the base structure, the lid coupler having a first coupling position occurring when the lid is in an opened position, the lid coupler including an adjustable lid actuator and an adjustable lid latch, each rotatable in a common plane substantially parallel to a front of the base structure.

53. A vehicle storage box, comprising:

a base structure;

a lid, pivotally connected to the base structure; and

a lid coupler configured to releasably couple the lid to the base structure, the lid coupler having a first coupling position in which the lid coupler engages the lid when the lid is in an opened position.

The Examiner relies on the following evidence:

Grove

US 460,437

Sep. 29, 1891

Howe

US 532,067

Jan. 8, 1895

Saunders	US 1,155,447	Oct. 5, 1915
Luce	Re 16,643	May 31, 1927
Wilkinson	US 2,708,302	May 17, 1955
Remington	US 4,363,226	Dec. 14, 1982

The following grounds of rejection are before us for review:

- I. Claims 27, 28, 30, 34, and 53 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Remington;
- II. Claims 35 and 36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Saunders;
- III. Claim 53 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a), as being rendered obvious by Howe;
- IV. Claim 53 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Wilkinson;
- V. Claim 53 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Luce;
- VI. Claims 35, 36, 38, 39, 43-49, and 53 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Grove; and
- VII. Claim 49 stands rejected under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Grove and Howe.

We reverse all grounds of rejection.

#### PRINCIPLES OF LAW

The interpretation of terms in a claim is a matter of law. *In re American Academy Of Science Tech Center*, 367 F.3d 1359, 1363 (Fed. Cir. 2004). During prosecution before the Office, claims are to be given their

broadest reasonable interpretation consistent with the Specification as it would be interpreted by one of ordinary skill in the art. *Id.* at 1364

To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, (Fed. Cir. 2001).

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The Supreme Court has recently emphasized that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. Moreover, an “[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982).

#### ISSUE

The Examiner finds that claims 27, 28, 30, 34, and 53 are anticipated by Remington.

Appellant contends that Remington does not teach or suggest a lid coupler having a first coupling position in which the lid coupler engages the lid when the lid is in an opened position.

Thus, the issue on appeal is: Has Appellant established that the Examiner erred in finding that Remington anticipates a storage box having a lid coupler that has a first coupling position in which the lid coupler engages the lid when the lid is in an opened position?

#### FINDINGS OF FACT

FF1 The Specification teaches that an advantage of the invention is to provide a vehicle storage box that “has a dual actuating cam latching design, which catches when the lid is still open.” (Spec. 4, ll. 11-13.)

FF2 An advantage of the invention is “to provide a vehicle storage box which facilitates closing and locking of an overfilled box.” (*Id.* at ll. 14-15.)

FF3 Figure 2 on the instant Specification is reproduced below.

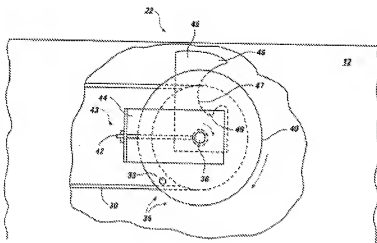


Fig. 2

Figure 2 is a front view of the lid actuator means (*id.* at 6, l. 15).

FF4 According to the Specification:

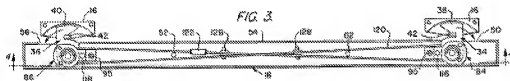
Lid actuator 22 is constructed to rotate substantially 180 degrees about bolt 36. The need to rotate substantially 180 degrees is a function of hooking cam 45. To enable the user to hook lid latch 24 while lid 14 is still in an opened position, and to then rotate lid actuator 22 to its final position wherein lid latch 24 completely tracks withing cam 47 pulling lid 14 to a closed and secured position, lid actuator must rotate substantially 180 degrees. The range of motion hooking cam travels from the first coupling position to the final coupling position is substantially 180 degrees. This allows the relationship between lid actuator and hooking cam 45 to function as intended.

(*Id.* at 10, ll. 11-19.)

FF5 “Engage<sup>3</sup>” may be defined as “[t]o be in gear, as two cogwheels working together.”

FF6 The Examiner rejects claims 27, 28, 30, 34, and 53 under 35 U.S.C. § 102(b) as being anticipated by Remington (Ans. 3).

FF7 The Examiner relies on Figure 3 of Remington, reproduced below.



<sup>3</sup> engage. Dictionary.com. *Webster's Revised Unabridged Dictionary*. MICRA, Inc. <http://dictionary.reference.com/browse/engage> (accessed: April 22, 2009).



Figure 3 is “a front elevational view of a section of the [latching] console which attaches interiorly of the luggage case” of Remington (Remington, col. 3, ll. 12-13).

FF8 The Examiner finds that Remington teaches a base structure and a lid, and “a lid coupler comprising hooking cams 38, 40 and lid latches 16 with protrusions 42 configured to releasably couple the lid to the base structure.” (Ans. 3.)

FF9 As to the limitation that “the lid coupler engages the lid when the lid is in an open position,” the Examiner points to hooking cams 38 and 40 which rotate to engage the lid latch at protrusions 42. The Examiner notes that Figure 3 does not show the moment that hooking cams 38 would engage latch protrusions 42, but finds that “hooking cams 38 and 40 would engage first at the slanted edges (note the slanted edge adjacent numeral 38 in Fig. 5),” and that “[a]s the locks rotate the slanted edges would force the latch protrusions 42 into the lock position in Fig. 3.” (*Id.*)

FF10 Remington teaches “a latching system suitable for use on a luggage article, particularly in a latching console which may be attached to one section of a luggage article . . . for releasably securing that section to another section of the article.” (Remington, col. 1, ll. 5-9)

FF11 According to Remington,

Latch-carrying section 18 of the latching console carries spaced swivelling latches 34, 36 adapted to swivel in planes parallel to the general plane of wall portion 26 and a drive mechanism . . . for providing swiveling movement of the latches in unison. The latches have hook portions 38 and 40 adapted to engage posts 42 of the respective hasps. The lock and actuator assembly 20 includes a manual actuator 44 for effecting swiveling movement of latch 34 (and through the

drive mechanism corresponding movement of latch 36) and a combination lock 46 for locking the actuator and latches in position when the case is closed.

(*Id.* at col. 4, ll. 3-14, emphasis added)

## ANALYSIS

Appellant argues that “Remington does not teach or suggest the claimed hooking cam that engages the lid latch while the lid is in an opened position.” (App. Br. 8.) Remington, Appellant asserts, is drawn to a latching system for luggage, as can be seen in Figure 3 of Remington, “the lid latch (42) cannot be engaged by cam (38) unless the lid is in a closed position.” (*Id.*) According to Appellant, “Remington clearly states that the lid of the luggage is closed before the latches are engaged.” (*Id.*)

We find that Appellant has the better position. Starting with claim 53, claim 53 requires that “the lid coupler having a first coupling position in which the lid coupler engages the lid when the lid is in an opened position.” We interpret “opened position” as there being some space between the base and lid, and excluding a position where, the lid overlaps the base such that there is no open space between the lid and the base, but where the lid and the base are not in the final locked position. Such a position may occur when the base has a section over which the lid fits, such as shown in Figure 3 of Grove.

In addition, the Examiner appears to be interpreting “engaged” as merely touching. However, “engage” is defined as “[t]o be in gear, as two cogwheels working together.” (FF5.) In addition, the Specification teaches a vehicle storage box that has a dual actuating cam latching design that

catches when the lid is still open (FF1). Thus, in view of the teachings of the Specification and the dictionary definition, we interpret “engaged” as requiring that the lid coupler catch the lid, such that the lid is held in position by the lid coupler while the lid is in an opened position.

The Examiner finds that that hooking cams 38 and 40 would engage first at the slanted edges (note the slanted edge adjacent numeral 38 in Fig. 5), and that as the locks rotate the slanted edges would force the latch protrusions into the lock position in Fig. 3 (FF9). As noted above, however, the Examiner appears to be interpreting “engaged” as touching, and the Examiner has provided no evidence or scientific reasoning that the hooking cams would engage the latch protrusions such that the lid is held in position by the hooking cams while the lid is in an opened position. Moreover, as noted by the Appellant, Remington specifically teaches that the actuator and latches are locked into position when the case is closed (FF11). Thus we find that the Examiner has failed to set forth a prima facie case of anticipation.

Claim 27, the other rejected independent claim, also requires the limitation “the lid actuator including a hooking cam to engage the lid latch while the lid is in an opened position,” and thus the Examiner has failed to set forth a prima facie case of anticipation as to that claim, as well as the claims dependent thereon, for the same reasons set forth with respect to claim 53.

## CONCLUSION(S) OF LAW

We find that Appellant established that the Examiner erred in finding that Remington anticipates a storage box having a lid coupler that has a first coupling position in which the lid coupler engages the lid when the lid is in an opened position. We thus reverse the rejection of claims 27, 28, 30, 34, and 53 under 35 U.S.C. § 102(b) as being anticipated by Remington.

## ISSUE

The Examiner finds that claims 35 and 36 are anticipated by Saunders.

Appellant contends that Saunders does not meet the limitation that the lid actuator rotates 180 degrees to move the hooking cam.

Thus, the issue on appeal is: Has the Appellant established that the Examiner erred in finding that Saunders meets the limitation that the lid actuator rotates 180 degrees to move the hooking cam?

## FINDINGS OF FACT

FF12 The Examiner rejects claims 35 and 36 under 35 U.S.C. § 102(b) as being anticipated by Saunders (Ans. 4).

FF13 The Examiner finds that “Saunders teaches [a] storage box having a base structure, . . . a lid coupler including a lid latch and a lid actuator.” (*Id.*)

FF14 As to the limitations that the lid actuator rotates 180 degrees, the Examiner finds that the curve portion is about 180 degrees, and thus “portion 10 can travel substantially 180 degrees as claimed, depending on the rotating closing force.” (*Id.*) According to the Examiner, “[t]here is nothing to limit the traveling of portion 10 [to] the entire curved portion 14,” and that the

“functionality of the actuator rotating 180 degrees does not impart any structure over the latch structure in Saunders.” (*Id.* at 4-5.)

FF15 Saunders is drawn to an air-tight shipping can for butter, lard, and other fat containing products (Saunders II. 8-19).

FF16 Figures 1 and 3 of Saunders are reproduced below:

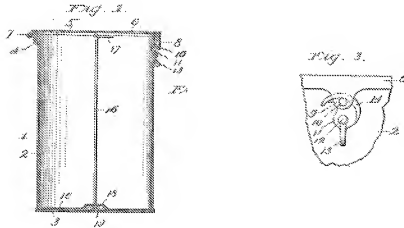


Figure 1 shows a vertical central section of the container of Saunders, and Figure 3 is a broken front elevation of the container, showing the latch for securing the lid in a closed position (*id.* at II. 25-30).

FF17 Saunders teaches:

Lid 6 is provided at a point diametrically opposite hinge 7 with a depending lip 9, having an inwardly extending lug 10 for engagement with an eccentric latch 11, pivotally secured to the adjacent side of a cylinder 2 by a pivot 12. Latch 11 has a handle 13, whereby it may be rocked on its pivot 12 to engage or disengage the stud 10. By having the eccentric portion 14 of the latch engage the stud 10 as shown in Fig. 3, said latch firmly draws the lid 6 down upon the gasket 5, thereby making the upper end of the container 1 air-tight.

(*Id.* at II. 45-57.)

## ANALYSIS

Appellant argues that Saunders does not meet the limitation that the lid actuator rotates 180 degrees to move the hooking cam (App. Br. 10).

According to Appellant:

[L]ug (10) is part of the lid (6) and does not move except with opening of the lid (6). Latch (11) rotates to move the eccentric portion (14) around the lug (10) to seal the lid (6). However, the latch (11) does not rotate 180 degrees. Rather, the lid (6) is released if the latch (11) is move[d] only 90 degrees as is evident from Saunders' Fig. 3. Moreover, the lip (9) of the lid (6) will prevent the latch (11) from moving a full 180 degrees.

(*Id.* at 11.)

Claim 35 recites the limitation of a “means for engaging and latching the lid latch including a hooking cam for facilitating closing and securing the lid to the base structure, . . . wherein the lid actuator rotates substantially 180 degrees along the hooking cam such that the lid latch is forced through cam action.” As can be seen in Figure 3 of Saunders (FF16), when the lid is in a closed position, we agree with Appellant that at most the lid latch has been rotated 90 degrees.

The Examiner finds that the curve portion of the lid latch is about 180 degrees, and thus portion 10 can travel substantially 180 degrees as claimed, depending on the rotating closing force, asserting that there is nothing to limit the traveling portion 10 to the entire curved portion 14 (FF14). However, the position shown in Figure 3 of Saunders is the closed position, and the Examiner has not provided any evidence that the latch could travel substantially 180 degrees without the lip of the lid interfering, or without damaging the lid latch.

## CONCLUSIONS OF LAW

We find that Appellant has established that the Examiner erred in finding that Saunders meets the limitation that the lid actuator rotates 180 degrees to move the hooking cam.

We thus reverse the rejection of claims 35 and 36 under 35 U.S.C. § 102(b) as being anticipated by Saunders.

## ISSUE

The Examiner finds that claim 53 is anticipated by Howe, Wilkinson, or Luce, or in the alternative, that claim 53 is rendered obvious by Howe.

Appellant contends that none of Howe, Wilkinson, or Luce teaches or suggests that the claimed lid coupler having a first coupling position in which the lid coupler engages the lid is in an opened position.

Thus, the issue on appeal is: Has Appellant established that the Examiner erred in finding that any of Howe, Wilkinson, or Luce teaches or suggests that the claimed lid coupler has a first coupling position in which the lid coupler engages the lid is in an opened position?

## FINDINGS OF FACT

FF18 The Examiner rejects claim 53 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a), as being rendered obvious by Howe (Ans. 5).

FF19 The Examiner finds that as to the limitation that “the lid coupler engages the lid when the lid is in an open position,” that as shown in Figure

2 of Howe, that coupling position is achieved when the hooking cams at C2 start to engage by touching the lid latch C3 (*id.*).

FF20 As to obviousness, the Examiner concludes that “to the degree it is argued that the two portions a and b are not pivotally connected,” the Examiner takes “Official Notice that it would have been obvious to one of ordinary skill in the art to provide a hinge to provide a pivotal connection.” (*Id.*)

FF21 Howe teaches a clasp or fastening, which may be preferably used on a violin box (Howe, Il. 10-13).

FF22 Figures 1 and 2 of Howe are reproduced below.

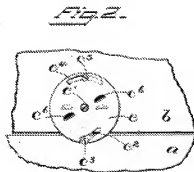
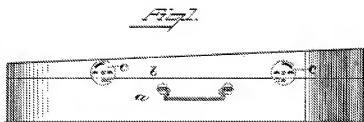


Figure 1 shows a violin box with two of the fastenings taught by Howe, and Figure 2 shows an enlarged front elevation of one of the fastenings in its unlocked position (*id.* at Il. 36-42).

FF23 According to Howe, the fastener consists of



a metallic circular disk or plate  $c$ , pivoted at  $c'$  to the cover  $b$ , near its lower edge, so that a segmental portion of said disk or plate will project below the lower edge of the cover. A slot or recess  $c^2$  is cut or otherwise formed in said lower projecting portion of the disk or plate extending in a direction obliquely to the radius of the disk, to receive the pin  $c^3$  secured to and projecting outwardly from the box  $a$ . The side edges of said slot  $c^2$  are or may be curved as shown on an axis eccentric to the axis upon which the disk or plate turns, so that as the pin  $c^3$  enters the slot, and the disk or plate is turned, the parts  $a, b$ , of the box will be drawn together. So also by curving the slot as shown I find that by closing the parts  $a, b$ , of the box together, as the pin  $c^3$  strikes the curved side at the entrance to the slot it will cause the disk or plate  $c$  to turn on its axis sufficiently to carry the pin  $c^3$  some distance into the slot or recess.

(*Id.* at ll. 50-70.)

FF24 The Examiner also rejects claim 53 under 35 U.S.C. § 102(b) as being anticipated by Wilkirson or Luce (Ans. 5).

FF25 The Examiner finds that as to Wilkirson, the limitation that “the lid coupler engages the lid when the lid is in an open position” is met when hooking cams 51 first engage the groove 52, and that as the cams 51 rotate, “the cams engage latches 54 along with the lid into the lock position in Fig. 13.” (*Id.*)

FF26 Wilkirson teaches a casket closing and sealing means (Wilkerson, col. 1, ll. 15-16).

FF27 Figure 3 of Wilkirson is reproduced below.

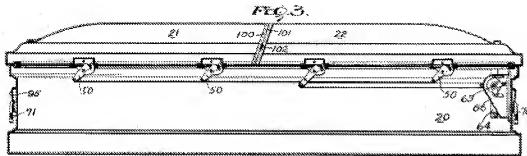


Figure 3 shows a “vertical sectional elevation showing . . . with its lids closed but not locked.” (*Id.* at col. 2, ll. 7-8).

FF28 According to Wilkirson:

To lock both lids, a plurality of cam-action latches 50 [Fig. 3] are employed. Each latch 50 includes a curved camming finger 51 defined by a curved slot 52 whose inner wall 52a is circular, with its center on the axis of the latch pivot pin 53, while its outer wall is arranged and extends outwardly an increasing distance from said axis, so that slot 52 is wider at its outer end than at its inner end. The camming finger 51 is designed to engage a keeper pin 54 fixed in a keeper plate 55 secured in the edge of the lid, and due to the design of the parts, the camming finger draws down the lid and pulls it even tighter against the sealing gaskets until the keeper pin finally reaches the inner end of slot 52.

(*Id.* at col. 2, ll. 51-63.)

FF29 With respect to Luce, the Examiner finds “that when the hooking cams 22 engages the latch protrusion 18 along path 18” it is the same as the claimed open position (Ans. 6).

FF30 Luce is drawn to a locking device for a trunk (Luce, ll. 1-2).

FF31 According to Luce,

The primary object of this invention is to provide improved means whereby the motion of a movable member associated with a key operated lock may be transmitted to one or more distant locking members to automatically operate the latter, whereby the closing and locking together of the parts of a trunk at one point, will without any attention on the part of the user result in a doweling, binding and locking together of trunk parts at one or more other points.

(*Id.* at ll. 13-23.)

FF32 Figures 6 of Luce are reproduced below.



Figure 6 is an elevational view of a trunk to which the invention of Luce has been applied (*id.* at 2, ll. 7-9).

FF33 As can be seen in Figure 6, the “cover section is locked to the body section by an ordinary key operated lock having a hasp 3<sup>a</sup>.” (*Id.* at ll. 126-128.)

## ANALYSIS

Appellant argues that none of Howe, Wilkinson, or Luce teaches or suggests that “the claimed lid coupler having a first coupling position in which the lid coupler engages the lid is in an opened position.” (App. Br. 12.)

As to Howe, Appellant argues that “it is perfectly clear from Fig. 2 of Howe, the latch C cannot engage unless the lid of the box is in a fully closed position.” (*Id.*) Moreover, Appellant asserts, as “seen in Wilkinson’s Fig. 3, the casket lid must be closed prior to the engagement of the latches (50),” and in Luce, as can be seen from figures 6 and 7, “the lid of the trunk must be closed before the latches for the lid are engaged.” (*Id.*)

With respect to Howe, Howe teaches that as the pin  $c^3$  enters the slot, and the disk or plate is turned, the parts  $a, b$ , of the box will be drawn together (FF23). While the Examiner finds that coupling position is achieved when the hooking cams at C2 start to engage by touching the lid latch C3 (FF19), that finding appears to be interpreting engage as touching, and not as requiring the lid coupler catch the lid, such that the lid is held in position by the lid coupler while the lid is in an open position. Moreover, the Examiner has not provided any evidence or reasoning as to why it would have been obvious to modify the hooking cams of Howe so that they engage while the lid is in an open position.

With respect to Wilkirson, the Examiner finds that the limitation that the lid coupler engages the lid when the lid is in an open position is met when hooking cams 51 first engage the groove 52, and that as the cams 51 rotate, the cams engage latches 54 along with the lid into the lock (FF25). Wilkirson, however specifically shows a closed casket, and states that the “camming finger 51 is designed to engage a keeper pin 54 fixed in a keeper plate 55 secured in the edge of the lid, and due to the design of the parts, the camming finger draws down the lid and pulls it even tighter against the sealing gaskets until the keeper pin finally reaches the inner end of slot 52.”

(FF28.) Thus, the actions of the hooking cams is to draw down the lid of the casket “even tighter” against the sealing gaskets, and therefore engages the keeper pin 54 when the lid is in a closed position.

With respect to Luce, the Examiner finds that when the hooking cams 22 engage the latch protrusion 18 along path 18, it is the same as the claimed open position (FF29). However, the mechanism of Luce is activated by turning a key in a lock (FF31), and as can be seen in Figure 6 of Luce (FF32), the key cannot be placed in the lock unless the lid is in a closed position.

## CONCLUSIONS OF LAW

We find Appellant has established that the Examiner erred in finding that any of Howe, Wilkerson, or Luce teaches or suggests that the claimed lid coupler has a first coupling position in which the lid coupler engages the lid is in an opened position.

We thus reverse: the rejection of claim 53 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a), as being rendered obvious by Howe, as well as the rejection of claim 53 under 35 U.S.C. § 102(b) as being anticipated by Wilkerson or Luce.

## ISSUE

The Examiner finds that claims 35, 36, 38, 39, 43-49, and 53 are anticipated by Grove; and concludes that claim 49 is rendered obvious by the combination of Grove and Howe.

Appellant contends that Grove does not teach or suggest the claimed lid coupling means having a first coupling position occurring when the lid is in an opened position.

Thus, the issue on appeal is: Has Appellant established that the Examiner erred in finding that Grove teaches or suggests the claimed lid coupling means having a first coupling position occurring when the lid is in an opened position?

#### FINDINGS OF FACT

FF34 The Examiner rejects claims 35, 36, 38, 39, 43-49, and 53 under 35 U.S.C. § 102(b) as being anticipated by Grove (Ans. 6).

FF35 The Examiner finds that Grove teaches a storage box that has a base structure and a lid, with “a lid coupler connected to the lid and the base structure.” (*Id.*)

FF36 The Examiner finds further that the “lid coupler comprises an actuator B, and a lid latch B’,” wherein the lid actuator includes “a V shaped hooking cam with one leg at b3 to engage the lid latch B’ while the lid is in an open position as shown in Fig. 3.” (*Id.*) According to the Examiner, the “lid latch B’ tracks along the hooking cam of the lid actuator such that the lid actuator is rotated the lid latch tracks along the hooking cam and the lid actuator is pulled down along the curve and into the notch at B2 (note point b3 in Fig. 1).” (*Id.*)

FF37 Grove teaches a box-fastener (Grove, ll. 2-7).

FF38 Figures 1 and 3 of Grove are reproduced below:

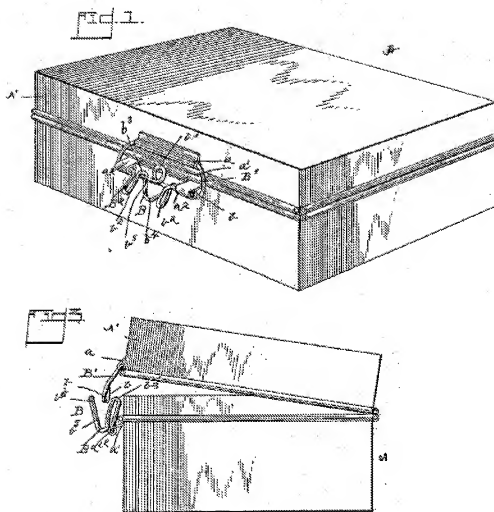


Figure 1 shows a box provided with fastener of Grove, and Figure 3 is a side elevation of the box fastener (*id.* at ll. 26-32).

FF39 According to Grove:

Inspection of Figs. 1 and 3 of the drawings will show that when the device is closed the upper section B' will rest between the arms  $b^5$  and the thumb piece  $b^6$  closer to the box than the loops  $a^2$ —that is, the said section B' will be within the points of pivotal support for the section B²—and therefore the device will not open of itself, . . . but the fastener will only be released and the box allowed to open by exerting pressure upon the arms  $b^5$  and turning the lower section B² into the position shown in Figs. 2 and 3.

(*Id.* at ll. 87-100)

FF40 The Examiner also rejects claim 49 under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Grove and Howe (Ans. 6).

## ANALYSIS

Appellant argues that “Grove does not teach or suggest the claimed lid coupling means having a first coupling position occurring when the lid is in an opened position.” (App. Br. 13.) Pointing to Figures 1 and 3 of Grove, Appellant contends that “the lid would have to be closed before the lower section (B<sup>2</sup>) can be rotated downward to the position shown in Fig. 1 to engage the upper section (B’) and secure the lid of the box.” (*Id.*)

Independent claim 35 requires a “lid coupling means including a lid latch coupled to the lid, and means, rotably coupled to the base structure, for engaging and latching the lid latch while in the first coupling position,” independent claim 43 requires a “lid coupler, connected to the lid and the base structure, shaped to releasably couple the lid to the base structure, the lid coupler having a first coupling position occurring when the lid is in an opened position,” and independent claim 53 requires a “lid coupler having a first coupling position in which the lid coupler engages the lid when the lid is in an opened position.” Thus, each of the rejected independent claims requires a lid coupler which engages the lid while the lid is an opened position.

The Examiner finds that the lid actuator of Grove includes a V shaped hooking cam with one leg at *b*<sup>3</sup> to engage the lid latch B’ while the lid is in an open position as shown in Fig. 3 (FF36). Figure 3 (FF38), however, does



not support that finding of the Examiner, *i.e.*, that the leg  $b^3$  of the V shaped hooking cam would be able to engage the lid, such that the lid is held in position by the leg  $b^3$  of the V shaped hooking cam while the lid is in an opened position, wherein there is some space between the base and lid, and not where the lid is over a portion of the lip of the base of the box of Grove. As noted by Grove, it is when the device is closed that the upper section B' will rest between the arms  $b^5$  (FF39).

#### CONCLUSIONS OF LAW

We conclude Appellant has established that the Examiner erred in finding that Grove teaches or suggests the claimed lid coupling means having a first coupling position occurring when the lid is in an opened position.

We thus reverse the rejection of claims 35, 36, 38, 39, 43-49, and 53 under 35 U.S.C. § 102(b) as being anticipated by Grove.

In addition, as Howe does not remedy the deficiencies of Grove, we also reverse the rejection of claim 49 under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Grove and Howe.

#### REVERSED

Ssc:

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